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CHURCH OF SCIENTOLOGY INTERNATIONAL

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HUB LAW OFFICES

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF LOS ANGELES

12
13 CHURCH OF SCIENTOLOGY)
INTERNATIONAL, A California not-for-profit)
14 religious corporation;)
15 Plaintiff,)
16 v.)
17)
18 GERALD ARMSTRONG; DOES 1 through)
25, inclusive,)
19 Defendant.)

Case No. BC 052395

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR SUMMARY
ADJUDICATION OF THE SECOND
AND THIRD CAUSES OF ACTION
OF THE AMENDED CROSS-
COMPLAINT

Date: March 31, 1993
Time: 8:30 a.m.
Dept.: 30

Trial Date: May 3, 1993
Disc: April 2, 1993
Mtn: April 19, 1993

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21 _____)
22 AND RELATED CROSS-ACTION.)
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I. INTRODUCTION

As described in separately filed motions for summary adjudication of numerous causes of action of the Amended Complaint, in December 1986, plaintiff and cross-defendant Church of Scientology International ("the Church") entered into a confidential Mutual Release of All Claims and Settlement Agreement (the "Settlement Agreement" attached as Exhibit "A" to the Declaration of Andrew H. Wilson [the "Wilson Decl."]) with defendant and cross-complainant Gerald Armstrong ("Armstrong"), the terms of which required Armstrong, but not the Church to refrain from aiding others in litigation and to refrain from discussing with third parties his experiences with the Scientology faith. In return, Armstrong received a substantial sum of money and a mutual release from the Church.

In its First Amended Complaint, the Church seeks damages for admitted breaches of the Settlement Agreement by Armstrong and a permanent injunction. In response, Armstrong has filed a Cross-Complaint alleging, inter alia, that the Church breached the Settlement Agreement (Amended Cross-Complaint, Third Cause of Action, hereinafter "Breach Claim") and abused process (id., Second Cause of Action, hereinafter "Abuse of Process Claim"). While Armstrong's allegations of supposed misconduct on the part of the Church are certainly colorful, the undisputed facts nonetheless prohibit any recovery by Armstrong for either of these claims.¹ The conduct allegedly constituting the "breach" is not prohibited by the Settlement Agreement at all. Moreover, the conduct which is alleged to "abuse" process is: (a) completely barred by the statute of limitations; (b) privileged pursuant to Civil Code § 47(2); and/or (c) does not involve the use of

25 ¹ Armstrong has named a string of other entities and individuals as cross-
26 defendants, but has made no effort to serve any of them. The cross-complaint
27 was filed on July 22, 1992 and amended on October 7, 1992. The Church
28 accordingly requests that the Court exercise its discretion, and dismiss the cross-
complaint as to these unserved cross-defendants. L.A.S.C. Rules 1306.1.2,
1307.1.

1 "process" for an "ulterior purpose."

2 Accordingly, the Court should enter judgment for the Church on the Second
3 and Third Causes of Action of the Amended Cross-complaint.

4 **II. STANDARD OF REVIEW**

5 Summary judgment is properly granted when the evidence in support of the
6 moving party establishes there is no issue of material fact to be tried. Code of
7 Civil Procedure Section 437c. Summary adjudication is the proper procedure for
8 determining an issue of law. See, Zahn v. Canadian Indem. Co. (1976) 57
9 Cal.App.3d 509, 512. The trial court must decide if a triable issue of fact exists.
10 Pittelman v. Pearce (1992) 92 Daily Journal D.A.R. 7371, 7372.

11 If none does, and the sole remaining issue is one of law, it is the duty of the
12 trial court to determine it. Id.

13 **III. THE CHURCH IS ENTITLED TO SUMMARY ADJUDICATION OF THE**
14 **BREACH CLAIM BECAUSE ITS ALLEGED CONDUCT DID NOT, AS A**
15 **MATTER OF LAW, BREACH THE AGREEMENT**

16 **A. There Are No Provisions In The**
17 **Agreement Which Preclude The Conduct**
Allegedly Constituting The Breach

18 The interpretation of a written instrument is essentially a judicial function to
19 be exercised according to the generally accepted canons of interpretation.

20 Western Medical Enterprises, Inc. v. Albers (1985) 166 Cal.App.3d 383, 389.

21 With respect to the Breach of Contract Claim, there are no questions of fact to be
22 resolved. The sole issue is a matter of law. If the Court finds that the Settlement
23 Agreement does not prohibit the acts alleged to constitute the breach, then the
24 Third Cause of Action must be dismissed. Armstrong alleges that the Church
25 breached the Settlement Agreement: "[B]y making reference to Armstrong (a) in
26 communications to the press, (b) in filing pleadings and declarations in various
27 litigations." (Paragraph 71 of the Cross-Complaint.) The Settlement Agreement
28 does not prohibit these acts and contains not one, but two separate clauses whose

1 clear import is to preclude any attempt to go beyond the four corners of the
2 Agreement. Paragraph 9 is an integration clause and paragraph 18B provides that
3 the parties have made no representations not contained in the Settlement
4 Agreement and did not rely on any representation or statement not contained in
5 the Settlement Agreement.

6 There are no provisions in the Settlement Agreement prohibiting the Church
7 from referring to Armstrong in its communications with the press or in legal
8 pleadings or declarations. The only provisions which refer to the conduct of the
9 Church are contained in Paragraphs 3, 5, 6, and 7.A and I.

10 Paragraph 3 requires the payment of money, which Armstrong admits he
11 received. [Sep.St.No. 13.]²

12 Paragraph 5 requires the filing of a dismissal with prejudice of the case from
13 which the settlement arose. The Court may take judicial notice of the filing of the
14 notice of dismissal with prejudice on December 11, 1986 in the action Armstrong
15 v. Church of Scientology of California, Los Angeles Superior Court Case No. 420
16 153. Evidence Code Section 452(d). [Sep.St. No. 14.]

17 Paragraph 6 is the standard waiver of all rights under Civil Code Section
18 1542. The Third Cause of Action does not allege breach of this section.

19 Paragraph 7.A. contains an agreement by all parties that liability is denied
20 and that the settlement cannot be treated as an admission of liability for any
21 purpose. The Breach Claim does not allege breach of this section.

22 Paragraph 7.B. contains an agreement that none of the parties bound by the
23 agreement shall use past activities of any of the parties as a basis for the filing of a
24 future lawsuit.

25 None of the above-recited paragraphs prohibit the conduct allegedly
26

27 ² References to Exhibits are to Exhibits to the concurrently filed Separate
28 Statement of Undisputed Facts as "Sep.St.No. __."

1 constituting the breach. Moreover, there is no language contained in the contract
2 which would be even colorably susceptible to a meaning which would prohibit
3 such conduct. Accordingly, the Church is entitled to judgment on the Third Cause
4 of Action.

5 **B. Armstrong Has Admitted That The Settlement Agreement Does**
6 **Not Prohibit The Conduct Allegedly Constituting The Breach**

7 The admissions of a party receive an unusual deference in summary
8 judgement proceedings. FPI Development, Inc. v. Nakashima (1991) 231
9 Cal.App.3d 367, 398. An admission is binding unless there is a credible
10 explanation for the inconsistent positions taken by a party. Id.

11 In his deposition, Armstrong admitted that he knew the provisions of the
12 Settlement Agreement prevented him from disclosing confidential information but
13 that the Church was not subject to those provisions. Indeed, during his deposition,
14 Armstrong expressed the extreme displeasure which he claimed to have felt with
15 his own attorney when that attorney showed him the Agreement, which, as
16 Armstrong read it, "says on its face they can continue to attack you with impunity,
17 Mr. Armstrong." [Sep.St.No. 15.] Nonetheless, Armstrong signed the Agreement:

18 Q. And at the time you got that agreement you recognized
19 that problem with it, that it didn't prohibit them from
20 saying whatever they wanted about you; right?

21 A. Well, I also understood from basic understanding and
22 from talking to Michael Flynn that as soon as they open
23 their mouth and say one word, they've waived it, you
24 have a new unit of time, they've violated it, that's it,
25 you're free to talk, you can respond because you cannot,
26 this does not have to do with future acts.

27 It does not say specifically they are free to, they will
28 interpret it that way.

29 [Id.]

30 In fact, Armstrong has testified that he did not believe when he signed the
31 Agreement that the Church would be able to enforce the Agreement, and obtain
32 what they had bargained for, because the provisions of the Agreement "were not
33

1 reciprocal" and, in Armstrong's mind, did not bind the Church. [Sep.St.No. 15.] In
2 opposing plaintiff's motion for preliminary injunction, Armstrong argued specifically
3 that the non-disclosure provisions were not binding on the Church: "Paragraph 7D
4 prohibited Armstrong from speaking to others about Scientology, but does not
5 prohibit Scientology from talking to others about Armstrong." [Id.]

6 **C. Armstrong May Not Rely On His Belief That The**
7 **Settlement Agreement Was Reciprocal**

8 It is anticipated that Armstrong will attempt to create material issues of
9 facts as to his (mistaken) "belief" that the Settlement Agreement was "reciprocal."
10 However, that approach must be rejected for two reason. First, Armstrong cannot
11 claim a mistake of law. In Haviland v. Southern California Edison Co. (1916) 172
12 Cal. 601, the plaintiff claimed that he was deceived into the belief that the release
13 he signed was not binding,
14 "... or, in other words, that it did not mean what it said." The Supreme Court
15 rejected that argument stating that:

16 The plaintiff knew that he was signing a [document]
17 which, by its plain terms, released defendant from
liability. He was under no misapprehension regarding its
language or its meaning.

18 Id. at 609.

19 It is well settled that misrepresentations of the legal interpretation of a
20 contract, at least where there is no relation of trust or confidence between the
21 parties, do not amount to fraud, and will not furnish a ground for rescission of a
22 contract. See, Id. at 608. The Haviland court noted that if the kind of evidence
23 adduced by plaintiff could be regarded as sufficient to establish a mistake of law,
24 "... there would be little binding force in written agreements, knowingly and
25 voluntarily executed by competent parties in full possession of the facts." Id. at
26 610.

27 In this case, Armstrong has alleged that his attorney told him that he had
28 expressed to the Church's attorneys that the document was unenforceable and

1 that allegedly they agreed. Yet Paragraph 18(B) of the document states that the
2 parties "... acknowledge that they have not made any statement, representation or
3 promise to the other party regarding any fact material to this Agreement except as
4 expressly set forth herein." Moreover, the Church and Armstrong were negotiating
5 an arm's length transaction, and as in Haviland, Armstrong cannot now claim
6 mistake of law since he was under no misapprehension that the contract did not
7 state the Church was bound by any of the promises Armstrong clearly would be
8 held to.

9 Second, if Armstrong fails to show a triable issue of fact with respect to the
10 Church's defense or that the breach of contract element exists, no amount of
11 factual conflicts upon other aspects of the case will affect the result and the
12 motion for summary judgment should be granted. (Emphasis Added.) Frazier,
13 Dame, Doherty, Parrish & Hanawalt v. Bocardo, Blum, Lull, Niland, Terlink & Bell
14 (1977) 70 Cal.App.3d 331, 338. The Settlement Agreement speaks for itself.
15 There is no language in the Settlement Agreement barring the Church or the other
16 cross-defendants from referring to Armstrong in communications with the press or
17 in pleadings and declarations.

18 Extrinsic evidence is admissible to interpret the instrument, but not to give it
19 a meaning to which it is not readily susceptible, and it is the instrument itself that
20 must be given effect. Parsons v. Bristol Development Co. (1965) 62 Cal.2d 861,
21 865. Armstrong cannot refute the clear language of the contract which he signed
22 and under which he acknowledged that the Settlement Agreement "contained the
23 entire agreement between the parties," that he entered into the agreement "freely,
24 voluntarily, knowingly and willingly, without threats, intimidation or pressure...",
25 that he carefully read the agreement and understood its contents, that he received
26 independent legal counsel from his attorneys, and that there were no collateral
27 agreements except what was expressly stated in the contract. [Sep.St.Nos. 3-9,
28 16.]

1 It is solely a judicial function to interpret a written instrument unless the
2 interpretation turns upon the credibility of extrinsic evidence. Id. The only
3 possible extrinsic evidence would be Armstrong's contention that the Settlement
4 Agreement actually meant something that it does not say. Armstrong admitted he
5 knew the Settlement Agreement did not subject cross-defendants to any
6 confidentiality provisions, and in fact, it does not. Therefore, summary
7 adjudication of the Breach Claim in favor of the Church is required.

8 **IV. THE SECOND CAUSE OF ACTION FOR ABUSE OF PROCESS MUST**
9 **BE DISMISSED BECAUSE THE ALLEGED ACTS ARE EITHER OUTSIDE**
10 **THE ONE-YEAR STATUTE OF LIMITATIONS OR THERE IS NO**
11 **MISUSE OF PROCESS**

12 The Second Cause of Action for Abuse of Process is inadequate for the
13 following reasons: (1) the alleged pre-July 22, 1991 conduct is precluded by the
14 one-year statute of limitations; (2) the alleged post-July 22, 1991 conduct is either
15 (a) privileged pursuant to Civil Code Section 47(2) and/or (b) does not involve the
16 use of "process" for an "ulterior purpose."³

17 The original Cross-Complaint was filed on July 22, 1992; an amended
18 version was filed on or about October 7, 1992. As will be discussed, conduct
19 occurring before July 22, 1991 is precluded by the applicable limitations statute.

20 Armstrong alleges that the Church abused the process of the court in
21 Armstrong I, in the present lawsuit, and in other litigation, with the ulterior motive
22 to suppress evidence, obstruct justice, assassinate cross-complainant's reputation,
23 and to retaliate against cross-complainant in the lawsuits. Cross-complaint at ¶¶

24
25 ³ The Church does not, by the making of this motion, admit that any of the
26 conduct alleged by Armstrong actually occurred; indeed, the bulk of the pre-1991
27 acts which Armstrong alleges are demonstrable figments of his fertile imagination.
28 For the purposes of this motion, however, any factual dispute as to these
allegations is irrelevant; even as alleged, they do not state a claim for abuse of
process.

1 65 and 66. There are no allegations even inferring that the Church used the
2 process of the Court to somehow pressure Armstrong for some collateral purpose.
3 The only "purpose" alleged is that the Church wanted to "attack" Armstrong and
4 prevent him "from being able to take any effective action to protect himself." Yet
5 there are no allegations explaining what advantage the Church supposedly gained.

6 **A. The Conduct Alleged To Have Occurred Before July 22, 1992 Is**
7 **Precluded by the Statute of Limitations**

8 The one-year statute of limitations pursuant to Code of Civil Procedure
9 section 340 applies to a cause of action for abuse of process. Thornton v. Rhoden
10 (1966) 245 Cal.App.2d 80, 95, 53 Cal.Rptr. 706, 717. In Thornton, the plaintiff
11 alleged that defendant had abused process by taking, transcribing and filing a
12 deposition in which the defendant made false and defamatory claims. The
13 deposition was taken and transcribed more than one year before the action for
14 abuse of process was filed, and filed one year exactly before the filing of the abuse
15 of process complaint. The Court of Appeal found that the alleged taking and
16 transcribing of the deposition were beyond the statute, and could not be
17 considered part of the plaintiff's abuse of process claim. Id.⁴

18 Here, alleged conduct which purportedly occurred prior to July 22, 1991 is
19 similarly beyond the statute of limitations, and any abuse of process claim which
20 could possibly attach to those claims (and the Church considers that none could) is
21 time-barred. On the face of the cross-complaint, the conduct alleged in paragraphs
22 13, 14, 15 through 24; 26 and 27; 29 and 30; 33 through 38; 40; 43 through 48
23 and 57, are alleged to have occurred before July 22, 1991.⁵ Accordingly, the

24
25 ⁴ The court went on to hold that defendant's actions were privileged, and
26 "even if we disregard the privilege, it is obvious that just taking the ordinary steps
27 in connection with the taking, transcribing and filing of the deposition cannot be an
28 abuse of process." 53 Cal.Rptr. at 720.

⁵ Moving parties do not waive their right to assert that some or all of the
conduct alleged in the foregoing paragraphs cannot be a basis for an abuse of

1 conduct alleged in those paragraphs is barred by the statute of limitations.

2 **B. The Conduct Post-July 22, 1991 Cannot Be the Basis For An Abuse**
3 **of Process Claim Because It is Either Not a Use of Process And/Or Is**
4 **Privileged.**

5 **1. Conduct Not Constituting Use of Process**

6 The tort of abuse of process has two elements. First, there must be
7 wrongful use of process, not merely a request for an initiation of process; and
8 second, the act complained of must involve the use of process. (Emphasis in
9 original.) Adams v. Superior Court (1992) 2 Cal.App.4th 521, 530 citing
10 generally, Prosser & Keeton, Torts (5th Ed. 1984) Abuse of Process § 121, pp.
11 897-898. As explained in Adams:

12 Process is action taken pursuant to judicial authority. It is not action
13 taken without reference to the power of the court. Thus, serving
14 upon plaintiff of false notice that a bench warrant had been issued is
15 not process, because in making the false statement defendant took no
16 action pursuant to court authority. (citations omitted.) [¶] Merely
17 obtaining or seeking process is not enough; there must be subsequent
18 abuse, by a misuse of the judicial process for a purpose other than
19 that which it was intended to serve. (Citations omitted.)

20 Id. The improper purpose usually takes the form of coercion to obtain a collateral
21 advantage, not properly involved in the proceeding itself, such as a surrender of
22 property, or the payment of the money by the use of the process as a threat or a
23 club. Czap v. Credit Bureau of Santa Clara Valley (1970) 7 Cal.App.3d 1, 5 citing
24 Prosser, Torts at p. 877. There is, in other words, a form of extortion, and it is
25 what is done in the course of negotiation, rather than the issuance or in the formal
26 use of the process itself, which constitutes the tort. Id.

27 In other words, as explained in Adams:

28 The gist of the tort is the improper use of the process after it is
issued. (Citations omitted.) Here all that is described is a motion to
prevent reduction of felonies to misdemeanors. That motion did not
result in the issuance of any process of the court which was then
abused. It produced no active judicial authority, no writ or order
which was then misused. Privileged or not, such activity falls short of

process cause of action on other grounds.

1 the tort of abuse of process, which most generally consists of acts
2 exterior to the lawsuit, such as attempted extortion or pressure on a
debtor by misuse of court orders. (Emphasis in original.)

3 Adams v. Superior Court, supra, 2 Cal.App.4th at 531.

4 The conduct alleged in paragraphs 49, 51 and 55, although occurring after
5 July 22, 1991, falls far short of the requirements of a claim for abuse of process.

6 Paragraph 49: This paragraph merely alleges an exchange of documents
7 between a client and its counsel. There is no use of process claimed and none can
8 be inferred from the allegation.

9 Paragraph 51: Armstrong alleges here that the Church placed Armstrong
10 under surveillance by private investigators after Armstrong began to breach the
11 Settlement Agreement. Again, there is no process involved.

12 Paragraph 52: Finally, Armstrong pleads that the Church filed declarations
13 about him in still another case in which he is not a party, Aznaran v. Church of
14 Scientology of California, et al., U.S.D.C. No. CV 88-1786 JMI(Ex) ("the Aznaran
15 case"). This is not a use of process.

16 Paragraph 55: The thrust of the allegations of this paragraph are that cross-
17 defendants' counsel refused to release persons other than Armstrong from non-
18 disclosure provisions contained in settlement agreements which those persons had
19 entered into. Once again, there is no process involved.

20 2. Privileged Conduct

21 Civil Code § 47(2) has been held to immunize defendants from tort liability
22 based on theories of abuse of process. Silberg v. Anderson (1990) 50 Cal.3d 205,
23 215. The judicial privilege applies if there is some reasonable connection between
24 the act claimed to be privileged and the legitimate objects of the lawsuit in which
25 that act took place. Adams v. Superior Court, supra, 2 Cal.App.4th at 529. The
26 privilege is broadly applied to protect most publications within lawsuits provided
27 there is some connection between the lawsuit and the publication. Id. Any doubt
28 as to whether the privilege applies is resolved in favor of applying it. Id.

1 Moreover, the mere filing of a complaint cannot constitute an abuse of process.
2 Drasin v. Jacoby & Meyers (1984) 150 Cal.App.3d 481, 485.

3 Paragraphs 53 and 54: In these paragraphs, Armstrong asserts that the
4 Church abused process by attempting to enforce the Settlement Agreement which
5 Armstrong signed in 1986, first by seeking to have the Agreement enforced by the
6 Court which, pursuant to the terms of the Agreement, continued to maintain
7 jurisdiction over the performance of the agreement, and then by filing a complaint
8 in this action. Finally, Armstrong asserts that the Church abused process by
9 seeking to have him held in contempt for wilful violations of a temporary
10 restraining order issued in March, 1992, by Judge Dufficy of the Marin County
11 Superior Court. As a matter of law, none of these actions could constitute an
12 abuse of process.

13 The motion to enforce the Settlement Agreement was filed by the Church
14 because, after spending the \$800,000 which he accepted to settle his claims,
15 Armstrong began, in July, 1991, to openly and admittedly breach the provisions of
16 the Settlement Agreement in which Armstrong had promised not to aid other
17 litigants against the Church, and not to discuss his experiences concerning the
18 Church, absent lawful subpoena.⁶ [Sep.St.No. 19, 21.] That motion was brought
19 in the settled action because the Settlement Agreement provided that the Los
20 Angeles Superior Court would have continuing jurisdiction to enforce the
21 Settlement Agreement in the event of a breach. [Sep.St.No. 22, 24.] The Court
22 denied the Church's motion on the narrow ground that the Settlement Agreement
23 itself was insufficient to confer upon it continuing jurisdiction. The merits of the
24 motion were never reached. [Sep.St.No. 25.] Thereafter, the Church sought to

25
26 ⁶ For a complete description of Armstrong's breaches which compelled the
27 Church to take legal action, see the Church's separately-filed Motion for Summary
28 Adjudication of the Twelfth Cause of Action, the Memorandum of Points and
Authorities, Separate Statement of Undisputed Facts filed in support thereof,
incorporated herein by reference.

1 enforce the Agreement by filing the Complaint in the instant case. [Sep.St.No. 26.]
2 On May 28, 1992, the Honorable Ronald Sohigian issued a preliminary injunction
3 enforcing the Settlement Agreement, finding, inter alia, that the Church had
4 demonstrated a substantial probability of success on the merits, had been
5 irreparably harmed by Armstrong's breaches, and that the earlier denial of the
6 motion to enforce the settlement agreement on jurisdictional grounds did not
7 preclude the bringing of the action. [Sep.St.No. 31.] In taking these actions, the
8 Church had no motive other than to enforce the Agreement and recover damages
9 for its breach.

10 Under these circumstances, neither the motion to enforce nor the bringing of
11 this action could possibly be considered an abuse of process, no matter what ill
12 motive Armstrong attempts to graft onto the Church's actions. In order for an
13 action to constitute an abuse of process,

14 Some definite act or threat not authorized by the process, or
15 aimed at an objective not legitimate in the use of the process is
16 required; and there is no liability where the defendant has done
nothing more than carry out the process to its authorized conclusion,
even though with bad intentions.

17 Thornton v. Rhoden, supra, 53 Cal.Rptr. at 720.

18 Here, Armstrong has alleged nothing more than that the Church used legal
19 process to enforce the Settlement Agreement which he signed, and which the
20 Church has fully performed. Armstrong does not claim that the Church is, by its
21 actions, attempting to obtain anything other than that which the Church bargained
22 for in 1986. He makes no claim that the Church has used this action, or the
23 previous action, to seek to obtain any goal other than those plainly stated in the
24 moving papers and the Complaint: Armstrong's performance of the terms of the
25 contract whose benefits he has received. This falls precisely within the rule of the
26 Adams case. There, the court upheld the sustaining of a demurrer to a claim for
27 abuse of process because it found that the motion brought by the defendant was
28 not an act exterior to the lawsuit, or brought to exert undue pressure by misuse of

1 a court's orders.

2 So, here, Armstrong's post-settlement dislike of the terms of the Settlement
3 Agreement, his mischaracterization of them, and his arguments that they are
4 somehow "unfair" or "improper" are immaterial. The Church is not seeking any
5 collateral objective by moving to enforce the Settlement Agreement, or by bringing
6 an action to enforce it. It seeks only to enforce the Settlement Agreement. Abuse
7 of process does not lie for the filing of an action for breach of contract. See,
8 Drasin v. Jacoby & Meyers, supra.

9 Armstrong's assertion that the Church's filing of a request for an Order to
10 Show Cause Re: Contempt for Armstrong's violation of the temporary restraining
11 order issued by Judge Dufficy violated process is equally unavailing. Judge Dufficy
12 ordered the action moved from Marin County to Los Angeles County, but only after
13 issuing a temporary restraining order prohibiting Armstrong from further breaching
14 the Settlement Agreement. [Sep.St.No. 27.] Before the file was moved to Los
15 Angeles, but after the TRO was issued, Armstrong discussed his experiences with
16 the Church for hours with attorneys for litigants against protected entities, and
17 gave interviews to the press in which he also disclosed his experiences with the
18 Church. [Sep.St.No. 28.] The Church argued in its moving papers that each of
19 these activities violated the TRO. [Sep.St.No. 29.] The Marin Court did not rule
20 on the merits of the Church's motion, but simply instructed the Church to re-file it
21 in Los Angeles. [Sep.St.No. 30.]⁷ Again, the Church was plainly and obviously
22 seeking only the object of its lawful litigation, and not acting with any collateral
23

24 ⁷ Once in Los Angeles, the Church concentrated its attention on obtaining a
25 preliminary injunction, rather than on obtaining a conviction of Armstrong for
26 contempt of the TRO. [Sep.St.No. 31.] However, Armstrong's contemptuous
27 disregard for court orders has not gone unnoticed; on December 31, 1992, the
28 Church sought and obtained an Order to Show Cause Re: Contempt against
Armstrong for deliberate violations of the Preliminary Injunction, which is set for
hearing on March 5, 1993.

1 purpose. Indeed, the Church has openly and obviously sought, throughout this
2 entire litigation, merely to obtain the benefits of its bargain with Armstrong. His
3 present dislike for his negotiated terms does not render a lawful action in pursuit of
4 them "abuse of process."

5 Applying the privilege broadly, as this Court must, most certainly the Church
6 was privileged to make the motion to enforce the Settlement Agreement, to file
7 this lawsuit and to seek an order of contempt.

8 Paragraph 50: The "conduct" is an allegedly false allegation in a complaint
9 by cross-defendants against the IRS that Armstrong was involved in plans to take
10 over cross-defendants' organization. As set forth above, the mere filing of a
11 complaint cannot constitute abuse of process. Drasin, supra.

12 Even assuming, arguendo, that the quoted statements concerning Armstrong
13 were false (and they were not), the statements are absolutely privileged. "[A]n
14 attorney at law is absolutely privileged to publish false and defamatory matters ...
15 during the course and as a part of a judicial proceeding in which he participates as
16 counsel, if it has some relation thereto." Friedman v. Knecht (1967) 248
17 Cal.App.2d 455, 460. The defamatory matter must have "some reference to the
18 subject matter of the pending litigation, although it need not be strictly pertinent or
19 relevant to any issue involved therein..." Id. The complaint to which Armstrong
20 refers is a complaint concerning an illegal criminal investigation launched by the LA
21 CID against the Church in 1984. The allegation of which Armstrong complains is
22 one of eighty which set forth in detail the constitutional violations occasioned by
23 the CID investigation. The use of Armstrong as an informant and conspirator is
24 obviously relevant to the causes of action set forth in the complaint. [Sep.St.No.
25 32-33.]

26 Paragraph 52: Finally, Armstrong pleads that the Church filed declarations
27 about him in still another case in which he is not a party, Aznaran v. Church of
28 Scientology of California, et al., U.S.D.C. No. CV 88-1786-JMI(Ex) ("the Aznaran

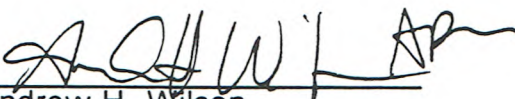
1 case"). The declarations to which Armstrong refers were only filed after
2 Armstrong began working for the Aznarans' lawyers on the Aznaran case, and
3 describe telephone conversations between Armstrong and the Church's counsel
4 concerning the Aznaran case. Armstrong also filed his own declarations in the
5 Aznaran case. [Sep.St.No. 20, 21.] Armstrong thus interjected himself into the
6 Aznaran case as a purported witness and as a paralegal.⁸ As described above, the
7 declarations are privileged under Civil Code § 47(2). Moreover, there are no
8 allegations in the cross-complaint which indicate that the declarations were then
9 used for any improper purpose as to Armstrong. At most, and stretching, the
10 allegations sound in some form of defamation, also protected by the litigation
11 privilege.

12 V. CONCLUSION

13 Armstrong's Amended Cross-Complaint purports to allege claims for Breach
14 of Contract and Abuse of Process, but those claims cannot survive summary
15 adjudication. The undisputed facts show that the Church has not breached any
16 provision of the Settlement Agreement which constitutes the contract between the
17 parties. The bulk of the actions claimed by Armstrong to be "abuse of process"
18 are long barred by the statute of limitations; the remainder do not involve the use
19 or process at all, or are absolutely privileged, even if they occurred as they are
20 alleged. The Church is accordingly entitled to summary adjudication of the Second
21 and Third Causes of Action of the Amended Cross-Complaint.

22 Dated: March 3, 1993

WILSON, RYAN & CAMPILONGO

23
24 By: 
25 Andrew H. Wilson

26 Laurie J. Bartilson

27 _____
28 ⁸ Armstrong is presently prohibited by the Preliminary Injunction from acting
as a paralegal on the Aznaran case.

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BOWLES & MOXON

**Attorneys for Plaintiff
Counter-Defendant CHURCH OF SCIENTOLOGY
INTERNATIONAL**

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Blvd., Suite 2000, Hollywood, California 90028.

On March 3, 1993, I served the foregoing document described as MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION on interested parties in this action by

[] placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] placing [] the original [X] a true copy thereof in sealed envelopes addressed as follows:

Paul Morantz
P.O. Box 511
Pacific Palisades, CA 90272

[] BY MAIL

[] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on _____, 1993, at Los Angeles, California.

[X] **** (BY PERSONAL SERVICE)** I delivered such envelope by hand to the offices of the addressee.

Executed on March 3, 1993, at Los Angeles, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
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Ford Greene
HUB Law Offices
711 Sir Francis Drake Boulevard
San Anselmo, CA 94960-1949

By U.S. Mail & Fax

- [X] BY MAIL
- [] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.
- [X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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